

Many complaints can be resolved by compromise. You may engage in settlement discussions at any time in the process and can save significant time and costs if you are able to reach a resolution.

What are some advantages of settlement?

Certainty of Outcome

The parties agree to a compromise and know with certainty what the outcome is instead of risking the uncertainty of what will happen if the case proceeds through an investigation and hearing.

A settlement allows all parties to bring the case to a conclusion with an agreement that all can live with. In contrast, all parties take the risk of losing if the case does not settle and the parties ultimately proceed to a hearing.

Saving Significant Amounts of Time and Money

Reaching a settlement will generally end the dispute and save the parties the time and costs associated with investigation, hearing and possible appeals. The earlier in the process that the parties can resolve a matter, the greater the time and cost savings are likely to be.

Confidentiality

Settlements can be written to preserve confidentiality and protect the privacy of each party. If the case goes to hearing, the hearing is generally open to the public and the news media.

How is a settlement talk started?

If you are interested in exploring settlement, you may contact the Equal Rights Officer (ERO) who is investigating your case or the Administrative Law Judge (ALJ) who will be hearing your case.

The ERO or ALJ may work with the parties directly regarding settlement or may refer the case to another staff member to act as the mediator.

Equal Rights Division Mediation Referral Program

If you request to have your case referred to mediation, it will be referred to an Administrative Law Judge (ALJ) who also serves as a mediator.

The ALJ mediator will then try to schedule an in person or telephone settlement mediation with the parties.

The role of the mediator is to facilitate communication between the parties in their attempt to reach a voluntary agreement. If requested by the parties or appropriate to the circumstances, the ALJ mediator may also engage in evaluative mediation.

Do I need an attorney to discuss settlement?

Parties are not required to have an attorney to discuss settlement. However, retaining an attorney can generally be helpful, and the choice is yours to make.

The ERO or ALJ who is working with the parties on settlement will act as a neutral facilitator to help the parties reach an agreement.

If the parties reach an agreement, the parties may draft the settlement document themselves or may request the ERO or ALJ to provide them with a draft agreement. It is noted, however, that drafts prepared by an ERO or ALJ are done for the convenience of the parties but do not constitute legal advice.

Where do I start with my settlement offer?

A Complainant's offer or a Respondent's counteroffer involves, among other things, an assessment of what the potential remedy will be if discrimination is proven. Remedies generally available may include:

- (re)instatement to a job
- back pay and interest
- attorney fees and costs
- other remedial orders

Under the Wisconsin Fair Employment Act (sec. 111.31, et seq., Wis. Stats.), emotional harm and punitive damages are generally not available in employment discrimination cases. However, emotional harm and punitive damages may be available in court in cases filed under some federal anti-discrimination statutes.

What are the components of a settlement agreement?

While settlement is often a desirable alternative (as opposed to proceeding with the administrative litigation), it is ultimately the parties' decision whether or not to settle.

A settlement agreement generally will include the details of what has been agreed to by the parties to resolve the case such as the amount of money to be paid and/or the job the Complainant will be (re)instated to. A settlement agreement will in addition often contain, among other things, a non-admission of liability provision and a release of claims. Settlement agreements will also often contain a confidentiality or non-disclosure provision.

Settling a case generally results in an end to the dispute and an order of dismissal will be issued.

However, if the parties are not able to reach a settlement, the case will then go on in the investigative or hearing process.

How should I prepare for a settlement conference?

Do your best to understand the views and interests of the other party.

Take into consideration the strengths and weaknesses of your case and the possible remedies if the case were to proceed to a hearing.

Try to decide what settlement terms would be satisfactory to you and what your range of flexibility would be if the other party is not willing to agree to everything that you would like.

Be respectful toward the other parties involved in the settlement conference.

Be patient!!! Negotiations usually involve some give and take before a settlement is achieved.

About This Pamphlet

This is one of a series of pamphlets highlighting programs in the Equal Rights Division within the Wisconsin Department of Workforce Development.

This pamphlet is intended to provide only general information and it is not intended to be a legal document or to be considered legal advice.

Pamphlet Series

- #1) Fair Hiring & Avoiding Loaded Interview Questions
- #2) Harassment in the Workplace
- #3) Pregnancy, Employment & the Law
- #4) Persons with Disabilities on the Job
- #5) Fair Employment Law & Complaint Process
- #6) Age Discrimination in the Workplace
- #7) Settlements

Questions about employment discrimination may be directed to the:

EQUAL RIGHTS DIVISION

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Offices are open 7:45 a.m. to 4:30 p.m. Monday through Friday

Web Site: <http://dwd.wisconsin.gov/er/>

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